UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AGRI-MARKETING, Inc. d/b/a USA Gypsum, Plaintiff	:	
v.	:	No. ___________
PROTERRA SOLUTIONS, LLC, STANLEY GIBSON, DEBORAH GIBSON, and MARK LAFON, Jointly and Individually, Defendants	:	JURY TRIAL DEMANDED

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff Agri-Marketing, Inc., d/b/a USA Gypsum, and Defendant ProTerra Solutions, LLC, entered into an agreement whereby Defendant ProTerra Solutions was obligated to design, manufacture, deliver and install a recycling system at the Plaintiff's place of business. The Defendant defaulted under the agreement and Plaintiff seeks damages incurred as a result of Defendant's failure to perform.

2. Additionally, Plaintiff seeks damages as a result of the fraudulent representations made by Defendant ProTerra Solutions, LLC, as well as Defendant Stanley Gibson, ProTerra Solutions, LLC's operations manager and Deborah Gibson and Mark Lafon, both believed to be members of ProTerra Solutions, LLC.

II. JURISDICTION AND VENUE

3. Jurisdiction is premised on 28 U.S.C. § 1332 (diversity jurisdiction): to wit, Plaintiff is a corporation with a principal place of business in Pennsylvania and Defendant is a

limited liability company with a principal place of business in Florida. Accordingly, there is complete diversity between Plaintiff and Defendant. The amount of controversy exceeds the minimum threshold of $75,000.

4. Venue is premised on 28 U.S.C. § 1391(b)(2) in that a substantial portion of the acts or omissions giving rise to the claims arose in this judicial district.

III. THE PARTIES

5. Plaintiff AGRI-MARKETING, Inc. d/b/a USA Gypsum is a corporation organized under the law of the Commonwealth of Pennsylvania with a principal address at 1368 West Route 897, Denver, PA 17517.

6. Defendant ProTerra Solutions, LLC is a limited liability company organized under the law of the State of Florida with a principal address at 8226 Indigo Ridge Terrace, Bradenton, Florida 34201.

7. Stanley Gibson is believed to be the operations manager as well as equity owner of Defendant ProTerra Solutions, LLC.

8. Deborah Gibson is believed to be an equity owner of Defendant ProTerra Solutions, LLC.

9. Mark Lafon is believed to be an equity owner of Defendant ProTerra Solutions, LLC and responsible for the design of the product delivered to Plaintiff.

IV. GENERAL ALLEGATIONS

10. Plaintiff is a drywall recycling company dedicated to converting drywall to beneficial uses (collectively, the "Property").

11. Terry Weaver is an owner of Plaintiff.

12. According to knowledge and belief, Stanley Gibson is the controlling member of the Defendant, ProTerra Solutions, LLC, and Mark Lafon is in charge of design and manufacturing.

13. Defendant advertises and promotes itself an entity with the requisite resources to design, furnish, and install integrated processing solutions (the "Recycling System") for recyclers.

14. On or about December 18, 2013, Plaintiff began discussions with Defendant to design, manufacture, deliver and install the Recycling System.

15. Defendant ProTerra Solutions, LLC by its agent and employee Stanley Gibson, represented to Plaintiff it had expertise in designing and fabricating equipment for solutions in the environmental processing industries and specifically that it possessed the skill, staff and expertise necessary to design, manufacture, deliver and install the Recycling System.

16. Pursuant to certain marketing literature provided to Plaintiff and relied upon by Plaintiff and inducing Plaintiff to contract with Defendant, Defendant represented: (a) it is a Florida, USA based company delivering quality, cost effective and on time solutions around the globe; (b) Defendant specialized in the design, fabrication and installation of equipment for the Biomass and C&D/Waste Recycling and Biofuel industries; (c) its management team consists of Engineers and Fabricators with over 100 years of combined fabrication and construction experience; (d) it works with the customer to design the most efficient and cost effective solution to the customer's needs; (e) it has the capability to manage any phase of a customer's project from concept to completion and excel in turn-key project solutions.

17. Defendant agreed to design, furnish and install an integrated processing solution for recovered wallboard material at Plaintiff's facility located at 1368 West Route 897, Denver, PA (the "Site") in consideration of $886,000.

18. By a proposal dated May 5, 2014, Defendant ProTerra Solutions, LLC memorialized its agreement to design, manufacture, deliver and install for Plaintiff and Plaintiff agreed to purchase from Defendant the Recycling System as further detailed in that proposal (the "Proposal"). A true and correct copy of the executed Proposal is attached hereto as "Exhibit A" and incorporated herein by reference.

19. Pursuant to the Proposal, the Recycling System would accept pre-processed gypsum material and remove the ferrous metals in order to recover acceptable gypsum and fiber products from the wallboard.

20. Pursuant to the Proposal, the Recycling System was to remain consistent with the 3D drawings/model presented to Plaintiff.

21. The Proposal includes a project overview, an extensive list of items to be provided by Defendant, payment terms, shipping date, delivery terms, engineering services, mechanical installation, lifting equipment, electrical installation and a price valid term.

22. The Proposal details the system configuration-process flow overview, which included a system that would in part: "Remove and discharge ferrous metals into a container" with the "remaining material … entering the primary trommel screen", and the trommel screen would then "capture the desired gypsum products and discharge them in specific bunkers", capture ferrous metals by "bar magnets', "larger material would [then] exit the trommel … allowing laborers to remove wood, metals and trash" a "cross belt magnet [would ensure] all ferrous metals are removed", the "remaining material … conveyed into a horizontal grinder to …

release the gypsum" and a magnet separator would "capture any ferrous metals that were released by the grinding process" (the "Recycling System Functions" or the "Project").

23. Pursuant to the same Proposal, seventeen (17) components were to make up the Recycling System (the "Components") as further described therein.

24. The Components were specifically to be supplied by Defendant pursuant to certain specifications as set forth in the Proposal ("Specifications").

25. Certain portions of the Project were to be specifically manufactured by Defendant.

26. The payment terms, as detailed in the Proposal, were as follows: (a) $62,000 for Engineering Services (paid in 2 payments of $31,000 each); (b) $245,000 Due with Order; (c) $245,000 due (4) weeks from deposit payment; (d) $165,000 Due (8) weeks from deposit payment; (e) $100,000 due prior to shipment from factory (or within 7 days of first offer to ship, whichever comes first); (f) $69,000 Net 30 days from shipment, or 14 days after startup, whichever comes first.

27. Per the Proposal, the delivery and mechanical installation of the Recycling System were included items.

28. Per the Proposal, the Recycling System shipping date was "16-18 weeks from the date of USA Gypsum's order placement and receipt of down payment and prompt return of approval drawings."

29. A warranty provision is set forth in the Proposal, and contains in part: "Subject to the notice requirements set forth in Paragraph 3 below, the following warranties are made by the Company: (b) on the date of shipment, the product(s) are as described herein, except as to items

not manufactured by the Company; (c) on the date of shipment, the product(s) are free of defects in workmanship and material, except as to items not manufactured by Company."

30. Reasonably relying on Defendant's representations regarding its expertise in designing and fabricating equipment for solutions in the environmental processing industries and pursuant to its commitments made in the Proposal, Plaintiff executed the Proposal on May 7, 2014.

31. On or about May 23, 2014 and August 1, 2016, Plaintiff made to separate payments to Defendant for engineering services in the total amount of $62,000.

32. Defendant supplied to Plaintiff sales and conceptual drawing with the proposal.

33. Plaintiff went on to pay to the Defendant the $245,000 due with the order on or about September 23, 2014, the $245,000 due four weeks from deposit payment on or about November 10, 2014, the $165,000 due eight weeks from deposit payment on or about January 30, 2015 and the $100,000 due prior to shipment from factory or within 7 days of first offer to ship, whichever came first on or about April 16, 2015 ("Payments").

34. Despite the order being placed by Plaintiff on or about September 23, 2014, and Defendant's obligation to make shipment of the Recycling System within 16-18 weeks from the date Plaintiff placed the order and made the $245,000 payment, only a portion of the Recycling System was received by Plaintiff on or about January 6, 2015 and as of April 15, 2015 the entire Recycling System had still not arrived.

35. On or about April 15, 2015, Defendant contacted Plaintiff and demanded from Plaintiff payment so that it could, according to Defendant, continue its work on the Recycling System.

36. During that same contact, Defendant demanded from Plaintiff this payment to allegedly permit Defendant to make payment to vendors.

37. Defendant made these representations knowing Plaintiff would rely thereon.

38. Reasonably relying on those representations, Plaintiff issued to Defendant two (2) checks in the amount of $50,000 each to pay the vendors as Defendant represented.

39. Upon information and belief, Defendant failed to use Plaintiff's funds delivered to Defendant to pay vendors and did not utilize the funds for any reason related to the Project.

40. On or about April 3, 2015, Defendant assured Plaintiff that the Project would be complete on April 20, 2015 and that Defendant's crew would stay until completion of the Project.

41. In reliance on Defendant's representation, on or about May 1, 2015, Plaintiff relocated his facility to 1368 West Route 897, Denver, Pennsylvania 17517.

42. As of May 1, 2015, Defendant had yet to complete the Project.

43. It was not until May 21, 2015 when Defendant next arrived at the Site.

44. From May 21, 2015 through May 22, 2015, Mr. Gibson and two (2) other of Defendant's crew members were at Plaintiff's Site performing a few adjustments to the Recycling System and installing the chute.

45. Mr. Gibson promised Plaintiff to return to the Site on or about May 26, 2015.

46. After May 22, 2015, Mr. Weaver contacted Mr. Gibson to inquire about his arrival time on May 26, 2015.

47. In response to Mr. Weaver's inquiry, Mr. Gibson informed Mr. Weaver that he was checking for flights.

48. Despite Mr. Gibson's promise to Mr. Weaver a return to the Site, the project is not complete and Defendant never returned to the New Facility.

49. To date, Plaintiff has paid to Defendant $817,000 for the Recycling System, yet Defendant has not completed the Recycling System requiring Plaintiff to contract with various third parties to complete the Project.

50. Since installation, Plaintiff has experienced significant issues with various Components including but not limited to the trommel screens and chutes, magnets, conveyers, mill beater bar cleaning rollers and augers.

51. Significantly, on the 19th of January, 2017, Plaintiff experienced a fire which originated at the general location of the change conveyor pulley head.

52. It is becoming apparent that several Components of the Recycling System were not engineered or designed properly, including but not limited to the trommel drum and gearboxes in that the gearboxes are geared wrong for proper separation performance and the service cycle is incorrect for the application.

53. Alternatively or additionally, Components of the Recycling System were not manufactured properly, including but not limited to the trommel drum, wheels, chutes, brush mounts, mill conveyers and magnets, causing in part, premature wear.

54. Several Components of the Recycling System have not been installed properly, including the trommel screens, trommel wheels, conveyers, magnets, augers, scales and conveyers.

55. Several Components of the Recycling System have not been delivered or supplied by Defendant, including but not limited to complete engineering drawings, the operating

maintenance and safety manual, the OEM manuals for most of the components, certain trommel dust control curtains, certain magnet chutes and tray type bar magnets.

56. Several Components of the Recycling System have yet to be installed, including but not limited to certain trommel chutes, beater rollers, magnets and magnet chutes.

57. Several Components of the Recycling System have not been completed, including several trommel chutes, grate magnets, trommel strip doors, in-line magnet chutes, side guards and cleats.

58. Several Components of the Recycling System supplied or installed in a substandard manner or inconsistent with the Proposal or the 3D drawings/model supplied by Defendant, including but not limited trommel screens not separating the material due, in part, to not meeting certain standards and magnets not removing all ferrous metal resulting in contaminated material, frequent plugging and damage of the mill.

59. It is believed and therefore averred that Defendant had knowledge of the RPMs necessary to permit separation of the products, and based upon this Defendant recommended and supplied a certain gearbox for the Recycling System to Plaintiff.

60. Plaintiff began experiencing issues with product separation in or around May 28, 2015, and thereafter notified Defendant.

61. Upon informing Defendant about the gearbox, Defendant told Plaintiff to crank up RPM above the recommended level, but it still did not run at the speed necessary to permit separation.

62. Defendant then recommended to Plaintiff to install lifters rather than correcting the RPM.

63. Because of Plaintiff's belief that Defendant had the requisite expertise, Plaintiff installed the lifters per Defendant's recommendation at Plaintiff's own expense.

64. The product separation continued despite installation of the lifters.

65. Plaintiff later reached out to the gearbox manufacturer and learned that this was the incorrect gearbox duty rating and that a different gearbox was required to increase RPM.

66. The long drum of the Recycling System, being the 48' trommel drum, snapped under the load based upon an improper design and the welding executed by Defendant.

67. Plaintiff had to procure a new gearbox in the amount of $10,000, and still was required to pay for the improper gearbox.

68. Due to Defendant's breach, Plaintiff has been required to move and reprocess materials, spend resources on additional labor, parts, consultants and energy beyond what was anticipated by the project as designed, purchase materials that the Recycling System was designed to generate.

69. From approximately the date of installation until June 2015, Plaintiff repeatedly provided notice to Defendant both verbally and in in writing of the failures of the Recycling System.

70. By letter dated June 17, 2015 mailed to Defendant at two (2) separate addresses via Certified Mail and First-Class Mail and sent also by facsimile, Plaintiff sent to Defendant a detailed notice of default (the "June 17th Correspondence"). A true and correct copy of the June 17th Correspondence with enclosure is attached hereto as "Exhibit B" and incorporated herein by reference.

71. Plaintiff received no response by Defendant of its June 17th Correspondence.

72. Plaintiff sent a subsequent letter to Defendant on September 16, 2016, in which Defendant's breach was again signaled. A true and correct copy of this letter is attached hereto as "Exhibit C" and incorporated herein by reference.

73. Plaintiff received no response by Defendant to this September 16, 2016 letter.

74. Defendant has not returned to the Site after May 22, 2015 to repair and/or replace the Recycling System or any one or more of the Components thereof.

75. The Recycling System designed, manufactured and installed by Defendant is incomplete, does not perform certain Recycling System Functions and fails to function according to the drawings and the Proposal, resulting in Plaintiff's damages.

76. Plaintiff has made the Payments to Defendant, but still does not have workable system.

77. Plaintiff made payments to Defendant with belief that vendors would be paid, but on information and belief, these vendors were not paid by Defendant.

78. Plaintiff has incurred, and will continue to incur, costs, damages and losses due to the improper design, manufacturing and installation of the Recycling System.

79. Defendant continues to be in breach of the Proposal.

COUNT I
BREACH OF CONTRACT

80. The foregoing paragraphs are realleged and incorporated herein by reference.

81. A legally cognizable agreement existed between Plaintiff and Defendant regarding the purchase by Plaintiff of the above-referenced goods and services based on the terms reference above.

82. Defendant had a duty to supply the above-referenced goods and to provide services pursuant to that agreement.

83. Defendant breached the agreement by failing to deliver the goods and services as detailed in the Agreement.

84. As a result of Defendant's conduct, Plaintiff has incurred damages as set forth above.

85. WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendant and award Plaintiff the minimum amount of $587,253.97, together with costs, fees and interest and any such further relief as may be proper and permitted.

COUNT II
BREACH OF WARRANTY

86. The foregoing paragraphs are realleged and incorporated herein by reference.

87. A warranty was contained in the agreement between the Plaintiff and Defendant.

88. Defendant had a duty to honor said warranty provision.

89. Defendant breached the agreement by failing to adhere to the warranty provision and honor the terms thereof.

90. As a result of Defendant's conduct, Plaintiff has incurred damages as set forth above.

91. WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendant and award Plaintiff the minimum amount of $587,253.97, together with costs, fees and interest and any such further relief as may be proper and permitted.

COUNT III
FRAUD

Agri-Marketing, Inc., d/b/a USA Gypsum v. ProTerra Solutions, LLC

92. The foregoing paragraphs are realleged and incorporated herein by reference.

93. Defendant represented to Plaintiff that it had the necessary skill, staff and expertise necessary to design, manufacture, deliver and install the Recycling System.

94. Defendant supplied Plaintiff with marketing literature indicating that it had the necessary skill, staff and expertise necessary to complete the Project.

95. It is believed and therefore averred that at all times relevant, Defendant knew it did not possess the necessary skill, staff and expertise necessary to design, manufacture, deliver and install the Recycling System.

96. At all times relevant, Defendants knew that Plaintiff would rely on Defendant's assertions and marketing literature that it possessed the necessary skill, staff and expertise necessary to design, manufacture, deliver and install and install the Recycling System as well Defendant's promise to pay vendors.

97. Plaintiff hired and contracted with Defendant reasonably relying on Defendant's misstatements relative to its skill, staff and expertise to Plaintiff's detriment.

98. Defendant failed to deliver a complete Recycling System as promised, and specifically one that worked according to the Proposal and promises made by Defendant.

99. Throughout the course of the relationship between the parties, Defendant on occasion demanded accelerated payment representing to Plaintiff that the payments were needed to pay vendors.

100. Defendant knew Plaintiff would rely on Defendant's representations regarding the need to pay vendors and indeed Plaintiff did reasonably rely thereon to its detriment.

101. For example on or about April 15, 2015, Stanley Gibson told Terry Weaver he must advance a payment of $100,000 (which was otherwise not due) in order to permit a payment by Defendant to a certain vendor and to pay labor. It is believed and therefore averred that despite Plaintiff's payment of the sum demanded, the monies were never paid to the vendor.

102. It is believed and therefore averred that Defendant fraudulently represented the need to pay vendors and indeed, pocketed the money and never used it to pay vendors.

103. At all times relevant, Defendant expressly and/or impliedly represented to Plaintiff that in addition to the tactical skills and resources the Plaintiff had the financial wherewithal to complete the project for Plaintiff.

104. It is believed and therefore averred that these representations were fraudulent in that at all times relevant, Plaintiff did not have the financial abilities to carry out its obligations to which Defendant was committed pursuant to its agreement with Plaintiff.

105. It is believed and therefore averred that indeed, much of the monies Plaintiff paid Defendant, particularly those installments which Defendant demanded from Plaintiff even though under the contract they were were not yet due, were not used for Plaintiff's project but either went in the pockets of Defendant and its officers or used to pay creditors from prior projects.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendant and award Plaintiff the minimum amount of $587,253.97, together with costs, fees, interest, punitive damages and any such further relief as may be proper and permitted.

COUNT IV
FRAUD

Agri-Marketing, Inc., d/b/a USA Gypsum v. Stanley Gibson

106. The foregoing paragraphs are realleged and incorporated herein by reference.

107. It is believed and therefore averred that at all times relevant Stanley Gibson ("Gibson") was the operating manager of ProTerra Solutions, LLC.

108. It is believed and therefore averred that Gibson made representations regarding Defendant's Pro Terra technical knowhow and financial wherewithal as referenced above in his individual capacity knowing them to be false and knowing Plaintiff would rely thereon, which Plaintiff reasonably did.

109. It is believed and therefore averred that Gibson made these fraudulent representations knowing Pro Terra could not and would not complete the project.

110. It is believed and therefore averred that Gibson engaged in this fraudulent conduct to advance his own interests instead of and/or in addition to the interests of the LLC, Pro Terra.

111. It is believed and therefore averred at all times relevant Stanley Gibson knew Pro Terra Solutions, LLC was grossly undercapitalized and unable to perform as required under the agreement with Plaintiff.

112. It is believed that it would be contrary to public policy to permit Defendant Gibson to hide behind the LLC veil when Defendant Gibson in his individual capacity not only knew of the technical inability of Defendant Pro Terra to produce as required under its agreement with Plaintiff but also knew it was financially unable to do so and Defendant Gibson individually participated in this scheme to defraud Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendants jointly and severally and award Plaintiff the minimum amount $587,253.97, together with costs, fees, interest, punitive damages and any such further relief as may be proper and permitted.

COUNT V
FRAUD
Agri-Marketing, Inc, d/b/a USA Gypsum v. Stanley Gibson, Deborah Gibson and Mark Lafon, Jointly and Individually

113. The foregoing paragraphs are realleged and incorporated herein by reference.

114. It is believed and therefore averred that at all times relevant all members of Pro Terra Solutions, LLC, including Stanley Gibson, Deborah Gibson and Mark Lafon, were aware ProTerra Solutions, LLC was woefully undercapitalized and therefore unable to deliver the product promised to Plaintiff.

115. It is furthermore believed and therefore averred all members knew ProTerra Solutions, LLC lacked the technical know how to design and manufacture the product promised to Plaintiff.

116. It is believed and therefore averred all members were aware ProTerra Solutions, LLC misrepresented to Plaintiff ProTerra Solution, LLC's ability to perform as required under the contract and knew Plaintiff reasonably relied on Stanley Gibson's misrepresentation to its detriment.

117. It is believed and therefore averred that it would be contrary to public policy and fundamentally unjust to permit the members of ProTerra Solutions, LLC to hide behind the LLC veil in that at all times the individual members participated in the fraud perpetrated on the Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendants jointly and severally and award Plaintiff the minimum amount $587,253.97, together with costs, fees, interest, punitive damages and any such further relief as may be proper and permitted.

COUNT VI
UNJUST ENRICHMENT

118. The foregoing paragraphs are realleged and incorporated herein by reference.

119. By accepting and spending the payments made by Plaintiff, while Plaintiff was left with an incomplete Recycling System and damages resulting therefrom, Defendant has been unjustly enriched by the retention of the payments.

120. An injustice would result if recovery is not granted for the enrichment received by Defendant.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in its favor and against Defendant and award Plaintiff the minimum amount $587,253.97, together with costs, fees and interest and any such further relief as may be proper and permitted.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff requests that this Court:

1. Enter judgment against Defendant in favor of Plaintiff, in an amount in excess of $75,000 together with interest, costs and fees as allowed by law;

2. Retain jurisdiction over this matter until such time as all response actions have been taken and all costs, fees and damages paid;

3. Grant such other relief as the Court deems appropriate.

Date: 2/7/17

Respectfully submitted,

GIBBEL KRAYBILL & HESS LLP

By: ____________________

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Exhibit A

PROTERRA RECYCLING SYSTEM

ProTerra Solutions, LLC

736 1st Street

Ruskin, FL 33570

Presented to:

Terry Weaver

USA Gypsum

1802 Texter Mountain Road
Reinholds, PA 17569

Quotation number: PTS-149 USA
Date: May 5, 2014